

TRANSCRIPT OF PROCEEDINGS

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

IN THE MATTER OF:

MB DOCKET NO. 04-191

SAN FRANCISCO UNIFIED SCHOOL DISTRICT

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In the Matter of:

**San Francisco Unified
School District**

For Renewal of License for
Station KALW(FM),
San Francisco, California

MB Docket No. 04-191

Facility ID No. 58830

File No. BRED-19970801YA

Volume 6

Thursday
June 9, 2005

The above entitled matter came on for
hearing pursuant to notice at 9:15 a.m.

BEFORE

RICHARD L. SIPPEL,
Chief Administrative Law Judge

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WASHINGTON, D.C. 20005-3701

APPEARANCES:On Behalf of the Licensee, San Francisco Unified
School District:

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On Behalf of the Enforcement Bureau:

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ALSO PRESENT:

Angela Miller, Deputy General Counsel, San Francisco
Unified School District

I-N-D-E-X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
William Helgeson		1061	1146	1190
Jason Lopez	1199	1202	1233	
Nicole Sawaya	1235	1236		

EXHIBITSID REC'DEnforcement Bureau:

11a	NAB memo	1058	1058
59	CFR §73.3527 & §73.3615	1060	1060
60	GM job description for KALW	1293	1295

SFUSD:

77	Exhibit A to GGPR's reply	1227	1234
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Start Time: 9:14 p.m.

Lunch: 12:00 p.m. - 1:08 p.m.

End Time: 6:21 p.m.

P-R-O-C-E-E-D-I-N-G-S

9:14 a.m.

Whereupon,

WILLIAM HELGESON

was recalled as a witness by Counsel for the Licensee,
and having been previously sworn, resumed the witness
stand, was examined and testified as follows:

JUDGE SIPPEL: Good morning, Mr. Helgeson.

THE WITNESS: Good morning.

JUDGE SIPPEL: You understand that you are
under oath, you are still under oath?

THE WITNESS: Yes, sir.

JUDGE SIPPEL: And I have to ask you
directly, did you speak with anybody besides your
attorney after you left the stand yesterday with
respect to your testimony?

THE WITNESS: No, I didn't.

JUDGE SIPPEL: Thank you.

Anything more?

MR. SHOOK: On a preliminary matter, I did
drop off for Your Honor and the court reporter, I gave
a copy to SFUSD's counsel of the NAB memo, which is
going to be Bureau Exhibit 11a.

JUDGE SIPPEL: All right. Can't we take
care of that right now? Let's do that now.

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1 MR. SHOOK: Okay.

2 JUDGE SIPPEL: Why don't you formally have
3 it identified, marked and we'll see if we can get into
4 the record right now.

5 MR. SHOOK: Your Honor, it is a six page
6 document. It is entitled -- well it has a number of
7 things on it. It has dated material for historical
8 purposes only, National Association of Broadcaster's
9 Counsel memo from the Legal Department, your public
10 file; what to keep, what to toss and where to keep it.

11 And this has been discussed previously in
12 connection with Bureau Exhibit 11. And it was
13 previously agreed that this material would be produced
14 and introduced as Bureau Exhibit 11a. And the Bureau
15 would request that it be received into evidence as
16 Bureau Exhibit 11a.

17 JUDGE SIPPEL: Okay. Is there any
18 objection?

19 MR. PRICE: No objection, Your Honor.

20 JUDGE SIPPEL: All right. Based on what
21 was represented yesterday on the record and having
22 seen the document now, the motion is granted. EB
23 Exhibit 11a is identified and received in evidence at
24 this time as EB Exhibit 11a.

25 (Whereupon, the document was

1 marked for identification as EB
2 *Exhibit 11a and was received in*
3 *evidence.)*

4 JUDGE SIPPEL: Thank you, Mr. Shook.

5 MR. SHOOK: Thank you, Your Honor.

6 MS. LEAVITT: Your Honor, there was other
7 housekeeping matter you asked us to take care of last
8 evening, and that was the rules, a copy of the 1996
9 Public File and Ownership Rules. And I wasn't sure if
10 you wanted actual copies to be entered into the
11 record, but I have them and you can introduce them
12 into evidence now or later, or however you would like.

13 JUDGE SIPPEL: Yes, I do want them in the
14 record. And why don't we take care of that now while
15 we're doing it, 'lest we forget.

16 MS. LEAVITT: Yes, Your Honor. Your
17 Honor, I would ask that we be allowed to move into
18 evidence EB proposed Exhibit, I think it is 59 at this
19 point. And it's two documents. One is Rule Section
20 733526 Local public inspection file of --

21 MR. SHOOK: Twenty-five.

22 MS. LEAVITT: Twenty-seven, rather. I'm
23 sorry. §73.3527 Local public inspection file of
24 Noncommercial Educational Stations. And it is a 4 page
25 document.

1 And the accompanying document to that
2 would be §73.615 Ownership.

3 MR. SHOOK: 3615.

4 MS. LEAVITT: 3615. Sorry. And these are
5 both from the October 1, 1999 edition of the Code of
6 Federal Regulations.

7 JUDGE SIPPEL: All right. Are you going to
8 consider them as a group as number 59.

9 MS. LEAVITT: Yes, I think so, Your Honor.
10 I stapled them separately, but I just think for ease
11 of reference. But however you would like to do it.

12 JUDGE SIPPEL: Well, I think the way
13 you've done it is fine. Is very helpful.

14 I take it there's no objections?

15 MR. PRICE: No objection.

16 JUDGE SIPPEL: All right. The exhibit as
17 identified by Ms. Leavitt is now marked for
18 identification as Bureau Exhibit 59 and is received in
19 evidence as Bureau Exhibit 59.

20 (Whereupon, the document was
21 marked for identification as EB
22 Exhibit 59 and was received in
23 evidence.)

24 JUDGE SIPPEL: Thank you very much. Does
25 that complete your preliminary matters then?

1 MS. LEAVITT: I think so, Your Honor.

2 MR. PRICE: Your Honor, just one
3 additional matter. As we discussed yesterday, Mr.
4 Lopez, the witness for the Bureau, is here today. And
5 it appears that we will not get through Ms. Sawaya's
6 testimony today, so we will take Mr. Lopez out of
7 order following Mr. Helgeson's testimony, whenever his
8 redirect is concluded.

9 JUDGE SIPPEL: Yes. I think we talked
10 about that before.

11 MR. PRICE: I apologize. We may have done
12 it out of your presence. I thought we had done it on
13 the record. But we had discussed it and Mr. Lopez,
14 since he's traveling here just for the day, to make
15 sure we took his testimony today and then send him on
16 his way, and then we'll move to Ms. Sawaya afterwards.

17 JUDGE SIPPEL: That's very appropriate and
18 very much appreciated. All right.

19 We can proceed then, Mr. Price?

20 CROSS EXAMINATION (con't)

21 BY MR. SHOOK:

22 Q Mr. Helgeson, I'd like to direct your
23 attention to Bureau Exhibit 30.

24 JUDGE SIPPEL: Okay. While the witness is
25 reading the document, I'm going to ask Ms. Leavitt

1 again, would you give me the effective date of those
2 rule citation that are in as Exhibit 59?

3 MS. LEAVITT: Yes, Your Honor. They're
4 both from the October 1, 1996 edition of the *Code of*
5 *Federal Regulations*. And I neglected to mention that
6 the rules regarding the ownership report consisted of
7 3 threes.

8 JUDGE SIPPEL: All right. Okay. I hear
9 you. Thank you very much.

10 THE WITNESS: Okay.

11 BY MR. SHOOK:

12 Q Mr. Helgeson, this appears to be an email
13 from Susan Jenkins to yourself. Did you receive this
14 email?

15 A I did receive this email on that date, or
16 maybe looked at it -- saw it on my email the next
17 morning.

18 Q And, now what causes you to say you might
19 have seen it either that evening or the next morning?

20 A Again, I don't remember if I actually saw
21 it on that date or maybe -- maybe I hadn't looked at
22 my email when this was sent. And so the next morning
23 when I came to work at KALW I saw it then.

24 Q So you would have received it either
25 sometime late Wednesday or you would have looked at it

1 early Thursday; Wednesday being April 4th, Thursday
2 being April 5?

3 A Yes, I would have.

4 Q The document makes reference to an
5 attachment, and there appears a marking here on the
6 email that there was an attachment. Was that
7 attachment your declaration?

8 A From this it appears to be that that was
9 the attachment.

10 Q Now, yesterday I seem to recall you
11 stating that Nicole was the person who was working
12 with Mr. Sanchez in terms of preparing answers for the
13 -- or responses to the FCC's Letter of Inquiry. What
14 explanation do you have as to why you're the person
15 who was going to be signing a declaration in
16 connection with the responses to the FCC's Letter of
17 Inquiry?

18 A It was my understanding that I was asked
19 to do a declaration. I don't recall that it had -- I
20 don't recall at this time that the decision had been
21 made that she also would do a declaration. I only
22 knew that I was being asked to do a declaration. And
23 I think it had more to do with the fact that I -- that
24 she was relatively new at the station.

25 Q Now, what did you understand the purpose

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1 of your declaration to be?

2 JUDGE SIPPEL: Which declaration are you
3 referring to?

4 MR. SHOOK: The declaration that's
5 attached to his letter which he received. This email,
6 I should say.

7 THE WITNESS: What did I understand my--

8 BY MR. SHOOK:

9 Q The purpose of the declaration to be that
10 is attached to this email?

11 A That -- that I was -- that I was agreeing
12 to the statements in my declaration. I was signing it
13 and I was -- I think that's the purpose of it. That
14 I was agreeing to what was being presented in -- and
15 the answers that were being sent back to the FCC.

16 Q I'd like to now direct your attention to
17 EB Exhibit 31.

18 JUDGE SIPPEL: Go off the record while he
19 reads.

20 (Whereupon, at 9:27 a.m. off the record
21 until 9:28 a.m.)

22 BY MR. SHOOK:

23 Q Did you generate Enforcement Bureau
24 Exhibit 31?

25 A Yes. This is an email from me to Susan

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1 Jenkins of Sanchez.

2 Q And can you determine from the email when
3 it was you responded to Ms. Jenkins?

4 A From the date, I can't tell if it's either
5 the 4th or the 5th. It looks like on the top it says
6 April 5th. I don't see any other date in there. To
7 Susan from Bill; Subject.

8 Q With respect to your declaration that's
9 referenced here, do you recall editing it anyway?

10 A No, I recall printing it out and reading
11 it and signing it.

12 Q Now, at the time you printed it out, read
13 it and signed it did you have the final version of the
14 letter that was going to the FCC to review in
15 conjunction with your declaration?

16 A At that time I don't recall when I had the
17 declaration in front of me signed that I had the final
18 copy in front -- I have no recollection of having the
19 final copy in front of me to sign. I know that the
20 draft has been sent and -- but I don't recall at that
21 time having the final one in front of me. We were on
22 something of a very tight time line. Ernie really
23 needed -- Ernie and Susan were I think still working
24 on the final when I had the declaration in front of me
25 to sign.

1 Q I'd now like to direct your attention to
2 SFUSD Exhibit 10.

3 A SFUSD? Okay.

4 Q Did you generate SFUSD Exhibit 10?

5 A Yes, I generated this email to Susan
6 Jenkins.

7 Q And as best we can, and I'd like your
8 confirmation if possible of the time sequence, if
9 SFUSD Exhibit 10 was sent to Susan Jenkins shortly
10 after EB Exhibit 31?

11 A Shortly after? Yes, this seems to be -- it
12 looks like I produced this on April 5th.

13 Q Now SFUSD Exhibit 10 and SFUSD Exhibit 11
14 if you could short of look at those together.

15 JUDGE SIPPEL: We're going to go off the
16 record for just a minute.

17 (Whereupon, at 9:34 a.m. off the record
18 until 9:35 a.m.)

19 BY MR. SHOOK:

20 Q Now having had a chance to look at both --

21 A Oh, I'm sorry. Can I just look -- I
22 forgot I was supposed to look at two, I only had one.
23 I'll just be one moment.

24 MR. DUNCAN: That is the one that you had
25 already looked at, too, Bob.

1 THE WITNESS: Oh, it is.

2 Okay.

3 BY MR. SHOOK:

4 Q Now, having looked at both SFUSD Exhibit
5 10 and SFUSD Exhibit 11 it appears that in SFUSD
6 Exhibit 10 you're telling Susan what it is you intend
7 to send her. And then with respect to SFUSD Exhibit 11
8 it is what you did send her?

9 A This is what I faxed her, yes.

10 Q Okay. Is this material faxed with respect
11 to SFUSD Exhibit 11 or did you Fed Ex the material?

12 A Actually, I -- I may have done -- I think
13 -- actually, I know I Fed Ex it to her on -- I Fed Ex
14 it to the Sanchez firm, the actual documents on April
15 5th for them to -- to be delivered to their office on
16 April 6th. I really can't recall. I believe she had
17 asked me, and it says -- it also here -- says here on
18 number -- on this one here to Susan, it says I'm
19 faxing you the following. So, obviously-- so the
20 originals were Fed Ex'ed. And from this, it appears
21 that I was also faxing them to her on April 5th and
22 Fed Exing on April 5th; I was doing both.

23 Q Now with respect to the spring 1997 KALW
24 Program Guide did you fax or Fed Ex a "Bill's Copy" of
25 that to her or was it a clean copy?

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1 A I would have to look at it to refresh my
2 *memory but that -- so at this point I can't recall*
3 without actually looking at it. I believe it was a
4 Bill's Copy, though, because in our work on preparing
5 and cleaning up the files we had taken my set of KALW
6 Program Guides that says "Bill's Copy" on them and put
7 them in the KALW public file at that time. Even if
8 there was one in there, we took one out just -- and we
9 just used my entire set of KALW Program Guides so that
10 the KALW file would be complete and up to date. And
11 that was done -- we worked subsequent to February 2001
12 conversations with the attorneys.

13 Q Now with respect to the AIDS update
14 quarterly issues report had you spoken with anybody to
15 determine when that report had actually been
16 generated?

17 A Right I could say I don't recall if I
18 remember when that report was generated.

19 Q Well, did you ever speak with Alan Farley
20 about when that report was generated?

21 A I don't recall a conversation with Alan
22 Farley about when that report was generated, no.

23 Q Now, according EB Exhibit 35 page 2 the
24 entry for April 5, 2001 there are three entries there
25 for the law firm, one being from SMJ and that reads

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1 "Revisions to letter to FCC. Work on legal summary
2 report to Ms. Sawaya and Mr. Campos re: GGPR history
3 and problems. AD work on exhibits to be filed with
4 the FCC. ETS work on summary legal report to Mr.
5 Campos, conference with Ms. Sawaya, work on response
6 to FCC. Numerous conferences with Mr. Helgeson." And
7 the total amount of time that Mr. Sanchez billed for
8 on that day was 5.5 hours.

9 Do you have any recollection of having
10 numerous conferences with Mr. Sanchez on April 5?

11 A On April 5? I don't if "numerous" meant
12 probably -- probably meant, you know, more than one
13 and I don't remember how many. I don't recall having
14 long conversations with him at all at that time. Like
15 I say, I think he was still working on finalizing the
16 document, and that seems to be what he was -- he was
17 doing here. And so he was perhaps asking me some
18 specific about that final or requesting something.

19 Q Do you recall discussing with him any
20 edits, proposed editors to the letter that was going
21 to go to the FCC?

22 A I don't recall the specific if any of the
23 conversations, what specific bit of information he was
24 asking or the purchase of asking it.

25 Q What I'm just trying to get clear in my

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1 mind is from a time sequence were you discussing
2 editors to the letter that was going to go to the FCC
3 after you had already signed your declaration?

4 A The exact time frame of that day, you
5 know, I couldn't give you specific. If I did the
6 singing, if I signed it, if I got phone calls from
7 Ernie regarding what he was working on and then signed
8 the declaration, or -- and if I signed the declaration
9 and subsequent to signing the declaration he -- I got
10 more phone calls. But I wouldn't -- I would have give
11 nothing -- I don't recall -- nothing stands out for me
12 at this time about any of the phone calls.

13 Q Now, I'm afraid this is just going to be
14 long and difficult, but I have to direct your
15 attention to EB Exhibit 34.

16 JUDGE SIPPEL: EB 34?

17 MR. SHOOK: Yes, sir.

18 BY MR. SHOOK:

19 Q Mr. Helgeson, at this point I'd leave it
20 to you to decide whether you need to read the letter
21 in its entirety or whether you can simply scan and
22 recognize it for what it is?

23 A Okay.

24 Q And then I can focus you on particular
25 parts of the letter.

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1 A Okay.

2 JUDGE SIPPEL: Do you want to give a
3 general description of the letter just for the record
4 purposes so we'll know what we're focused on here?

5 MR. SHOOK: Yes. EB Exhibit 34 is the
6 letter from the Sanchez law firm to Linda Blair at the
7 Audio Services Division, Mass Media Bureau. The
8 letter bears a date of April 5. It was received at the
9 FCC on April 6, 2001.

10 JUDGE SIPPEL: Thank you.

11 THE WITNESS: Okay.

12 BY MR. SHOOK:

13 Q Mr. Helgeson, did you see EB Exhibit 34
14 before it was filed at the FCC?

15 A I don't recall seeing this document before
16 it was filed with the FCC. I've seen it subsequent
17 to that, but I did not see it on that date. I don't
18 recall being -- sent a copy of it or reviewing a copy
19 of it.

20 Q Now, let me be a little bit more precise
21 in my question. Instead of the entire letter, which
22 also consists of the attachments, my real focus is on
23 whether or not you actually saw the letter that was
24 going to the FCC that was signed by Mr. Sanchez. So
25 that would be the nine page letter as opposed to all

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1 of the attachments that went it. Did you see that
2 letter before you signed your declaration?

3 A I reviewed whatever documents I've had to
4 refresh my memory about that period of time. And at
5 this point, I don't have any recollection of having
6 seen this letter before it was -- before it was sent
7 in, given the date of April 5th.

8 Q I want to go through and compare some of
9 the things that appeared in the draft of the letter
10 which you indicated that you had received and at least
11 read through, perhaps with not as close an eye as you
12 may have wished. And that is EB Exhibit 29.

13 A Okay.

14 Q Or excuse me, SFUSD Exhibit 21.

15 MR. DUNCAN: I don't believe there's
16 question on the table yet, Your Honor, but I do object
17 to the characterization of the witness' testimony with
18 respect to this document.

19 JUDGE SIPPEL: Is this just a counselor's
20 passing remark or is this a -- I mean, not yours. I
21 mean, the way Mr. Shook characterized it?

22 MR. DUNCAN: Yes. The passing reference.
23 And I suppose that the testimony will speak for
24 itself. The passing reference to frame my question.

25 JUDGE SIPPEL: All right. I will treat it

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1 according.

2 Do we have a question?

3 MR. SHOOK: Not yet.

4 JUDGE SIPPEL: Are you ready to go?

5 THE WITNESS: I'm -- I think at this point
6 I'll take a question, yes.

7 JUDGE SIPPEL: All right. We're ready for
8 a question.

9 MR. SHOOK: Very good.

10 BY MR. SHOOK:

11 Q Mr. Helgeson, in SFUSD Exhibit 21 page 2
12 there's a portion of the letter which reads as
13 follows: "As a result it was not until (blank)
14 1997.."

15 A I'm sorry. Can I just stop and say you
16 direct me about how far down on the page? What
17 paragraph.

18 Q It's the first full paragraph, beginning
19 with the fourth line.

20 A Okay. Okay.

21 JUDGE SIPPEL: Okay. Mr. Shook is going
22 to read to you.

23 THE WITNESS: Okay. And I'm just going to
24 maybe follow along.

25 JUDGE SIPPEL: That's fine.

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1 BY MR. SHOOK:

2 Q Starting on the fifth line. Sorry. I'm
3 learning to count.

4 (Laughter).

5 JUDGE SIPPEL: Do you want to read that to
6 him then so he follows with you?

7 MR. SHOOK: Right.

8 BY MR. SHOOK:

9 Q From SFUSD Exhibit 21 the first full
10 paragraph, fifth line, "As a result it was not until
11 (blank) 1997 that KALW was finally moved to its
12 present and permanent location at 500 Mansell Street."

13 Now, when we go to EB Exhibit 34 second
14 page it's a partial paragraph at the beginning of the
15 page beginning the eighth line down the sentence
16 reads: "As a result, it was not until December 1996
17 (barely four months after Mr. Ramirez was hired) that
18 KALW was finally moved to its present and permanent
19 location at 500 Mansell Street."

20 Comparing those two lines my question to
21 you is that for the sentence that appears in EB
22 Exhibit 34 were you the source of that information?

23 A I probably was the source of that
24 information since I was working there at the time and
25 knew pretty much the specific day and time or the

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1 specific month and year that we moved.

2 Q Were you aware of anybody else who was
3 conversing with Mr. Sanchez or Ms. Jenkins about
4 editing the letter that was going to go to the FCC?

5 A I know the draft was sent to Mr. Campos
6 and to the attorney for the School District and to
7 Jackie Wright, School District official and to Nicole
8 Sawaya and myself. So I -- I -- I -- from that I
9 would assume that other people -- I could have assumed
10 that other people were interacting with Mr. Sanchez,
11 but I didn't have any firsthand knowledge of it.

12 Q But as far as this particular sentence
13 goes, would it be your recollection that you were the
14 source of the information?

15 A I would believe that that would be my --
16 since I was the one at KALW at the time, yes.

17 Q Now, I want to focus on the last sentence
18 of the first full paragraph of SFUSD Exhibit 21, it's
19 on page 2.

20 A Page --

21 Q It begins the third line from the bottom
22 of that paragraph. The sentence reads as follows:
23 "Since settling from the Mansell Street location,
24 KALW's management has attempted to ascertain what was
25 missing from the files and to restore them to the

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1 appropriate condition in compliance with the
2 Commission's rules."

3 The companion sentence in EB Exhibit 34,
4 which is on page 2 beginning from the third line from
5 the bottom of the partial paragraph at the top of page
6 2 reads: "Once settled in the Mansell Street
7 location, KALW's management attempted to ascertain
8 what was missing from the files and to restore them to
9 the appropriate condition in compliance with the
10 Commission's rules."

11 Okay. And my question to you is did you
12 have any role in editing that sentence?

13 A I don't recall having -- at this time
14 having any role involving with that sentence, no. I
15 believe the Sanchez law firm, you know, who were
16 certainly our attorneys back in 1997, were aware of
17 whatever actions at that time. They were working with
18 the General Manager at the time, Jeff Ramirez. So they
19 would have known about what was going on since 1997.

20 MR. SHOOK: Your Honor, if you'd give me
21 a minute here. There are a number of questions that
22 I had drafted out before, which I believe were already
23 covered. So I'm not going to go into them again.

24 JUDGE SIPPEL: Fine. Do you want a couple
25 of minutes to prepare there --

1 MR. SHOOK: I would appreciate that.

2 JUDGE SIPPEL: All right. Let's go off the
3 record.

4 (Whereupon, at 9:54 a.m. off the record
5 until 9:57 a.m.)

6 BY MR. SHOOK:

7 Q In connection with EB Exhibit 31, I know
8 that we had talked -- well, actually let's me rephrase
9 that.

10 In connection with SFUSD Exhibit 21 we had
11 talked yesterday about whether you had spoken with Mr.
12 Ramirez in connection with the review of your draft,
13 of the draft SFUSD Exhibit 21. And my recollection of
14 your response was that you had not. Is that accurate?

15 A That's true. I didn't talk to Jeff
16 Ramirez at all during -- during this time of preparing
17 this draft.

18 Q Now in connection with the final version
19 that went to the FCC did you speak with Mr. Ramirez
20 about any factual matters that were in the letter that
21 was sent to the FCC?

22 A I didn't speak with Jeff Ramirez regarding
23 the final draft, although I don't know if anyone else
24 had.

25 Q Right. But you didn't?

NEAL R. GROSS

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